

U.S. DISTRICT COURT, DISTRICT OF COLORADO  
JUDGE WILEY Y. DANIEL  
Courtroom 15, Tenth Floor, Alfred A. Arraj U.S. Courthouse

HEARING, CONFERENCE & TRIAL PROCEDURES  
(Civil and Criminal Cases)

**REVISED AS OF NOVEMBER 12, 2002**

**I. GENERAL INFORMATION**

1. The procedures outlined herein are in addition to the requirements set forth in the Local Rules of Practice for the United States District Court for the District of Colorado ("Local Rules"). Copies of the Local Rules are available under the "Local Rules" button at <http://www.cod.uscourts.gov> and from the Clerk of the Court, (303) 844-3433.
2. **Failure to follow the Local Rules or the procedures outlined herein will result in an order striking the noncompliant filing or otherwise addressing the noncompliant action. Repeated failure to follow these procedures may result in an order granting other proper relief, including sanctions.**
3. Contact Information:
  - (a) If you have questions concerning courtroom technology, trial preparation or submission of trial exhibits, please contact my courtroom deputy clerk, Robert R. Keech, at (303) 335-2103.
  - (b) If you have questions concerning the status of a criminal motion or documents filed in a criminal case, please contact my criminal docketing clerk, Elaine Quintana, at (303) 335-2073.
  - (c) If you have questions concerning the status of a civil motion or documents filed in a civil case, please contact my civil docketing clerk, Eileen Van Alphen, at (303) 335-2045.
  - (d) If you need to reach my court reporter or wish to order a transcript, please contact Kara Spitler, at (303) 335-2108.
  - (e) If you need any other assistance, please contact my secretary, Tisa Duckworth, at (303) 844-2170.
  - (f) **My staff is not authorized to interpret these procedures, give**

**legal advice or grant oral requests over the telephone. If you want the Court to take action you will need to file a motion.**

4. All materials to be filed with the Court shall be filed with the Clerk of the Court in Room A105. Pursuant to the Local Rules, all such materials shall be filed with the Clerk in **triplicate** (an original and two copies) in civil cases and **duplicate** (an original and one copy) in criminal cases. Facsimile filing shall be made with the Clerk's Office, provided it complies with D.C.COLO.LCivR 5.1.
5. Effective December 1, 2001, Rule 5(b) of the Federal Rules of Civil Procedure has been amended to provide for electronic service of certain papers by express written consent. Read in conjunction with FED R. CIV. P. 5(a) and 77(d), this change authorizes electronic service of court orders in civil cases. Where all litigants consent in compliance with FED R. CIV. P. 5(b) and D.C.COLO.LCivR 5.2, I will serve all litigants electronically, subject to certain limitations hereinafter set forth.
  - (a) I will not serve orders electronically where a litigant's consent is limited to service by facsimile only. I do not have the clerical resources or equipment to undertake facsimile service generally. Where a litigant's consent is limited to facsimile service, court orders will be served, as they are currently served, by mail or district court box delivery.
  - (b) Where all parties consent to service by electronic mail, I will serve orders as attachments to an email. To preserve the format of the orders and to minimize the possibility of inadvertent modifications to orders after they are transmitted, the attachment will be in Portable Document Format (PDF). This format currently requires that the recipient have Adobe Acrobat Reader, which can be downloaded (free of charge) from the court's web site by clicking on the "Get Acrobat Reader" button at the bottom of the court's home page.
  - (c) Because every litigant consenting to electronic service will have equal, free access to software which will enable the litigant to receive PDF attachments, I will assume that PDF is an acceptable format for electronic service of court orders unless the litigant's written consent specifies otherwise. If the consent specifies otherwise, orders will be served by mail or by district court box delivery.

## **II. PAGE LIMITATIONS**

ALL filings must comply with the following requirements:

1. The text of opening and responsive briefs shall not exceed fifteen (15) pages in length. The text of any reply brief shall not exceed ten (10) pages in length. See D.C.COLO.LCivR 7.1 and D.C.COLO.LCivR 56.1 for applicable time limits for filing responsive and reply briefs.
2. Exceptions to the above page limitations will be made only in *extraordinary circumstances* where the Court decides that the complexity and numerosity of issues compel briefs of greater length. Permission to file briefs of greater length shall be sought by way of an appropriate motion filed well in advance of the deadline for filing such brief. A motion requesting such permission must include sufficient detail to allow the Court to discern the necessity (or lack thereof) of additional pages, and must be accompanied by a tendered copy of the proposed brief.

## **III. DEADLINES**

1. Compliance with all deadlines imposed by the Court is mandatory. If relief from a deadline is needed (i.e. extension of time to file or continuance of hearing), such relief must be sought by way of appropriate motion filed as far in advance of the deadline as possible (oral requests will not be considered). If the requested relief is not granted by order prior to the deadline, the parties must comply with the deadline.
2. If any motion or brief is stricken for failure to comply with the procedures outlined herein, it must be refiled prior to the expiration of the original deadline for filing or by such deadline as otherwise established by the Court.
3. Permission to file motions, briefs, or other documents after the expiration of an applicable deadline shall be sought by way of appropriate motion. A motion requesting such permission must include sufficient detail to allow the Court to determine whether the relief requested is appropriate and must be accompanied by a tendered copy of the proposed late filing.

## **IV. CITATIONS**

1. The citation format set forth in the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 17th ed. 2000), shall be followed in all citations contained in filings submitted to the Court.

2. Specific references to material in the record shall be cited as follows:
  - (a) In the case of papers filed with the Court, the title of the paper, the date on which it was filed or served, and a specific paragraph or page and line number; or, if the paper is attached to the motion, the paragraph or page and line number;
  - (b) In the case of interrogatories or requests for admission (the pertinent parts of which must be filed with the motion), the number of the interrogatory or request;
  - (c) In the case of depositions or other documents bearing line numbers, the specific page and line(s) establishing the fact;
  - (d) In case of affidavits submitted in support of the motion, the specific paragraph number establishing the fact;
  - (e) In the case of other materials not numbered by paragraph, line or page, a reference which will enable the Court to ascertain the fact without reviewing the entire document; the effort at specificity may be made by highlighting, manual underscoring, or pagination supplied by the movant.
3. General references to cases, pleadings, depositions, or documents are insufficient if the document is over one page in length. **The parties shall provide specific references in the form of pinpoint citations to identify those portions of the cases, pleadings, depositions, or documents relevant to the argument presented.** Only if the nature of the material does not permit a specific reference (e.g., "The contract contains no provision for termination") is a general reference sufficient.

## **V. SPECIAL INSTRUCTIONS CONCERNING MOTIONS TO DISMISS**

1. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed.

## **VI. SPECIAL INSTRUCTIONS CONCERNING MOTIONS FOR SUMMARY JUDGMENT**

In addition to the requirements outlined in Sections II.–IV. above, the following additional requirements apply to all motions for summary judgment. All statements of fact described below are *included* within the page limitations imposed above in Section II.

1. All motions for summary judgment must contain a "Statement of

Undisputed Material Facts.” This Statement shall set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes that fact.

2. Any party opposing the motion for summary judgment shall provide a “Response to Undisputed Material Facts” in its brief, admitting or denying the asserted material facts set forth by the movant. The admission or denial shall be made in paragraphs numbered to correspond to movant's paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to material in the record supporting the denial.
3. If the party opposing the motion believes that there are additional disputed questions which have not been adequately addressed in the submissions made pursuant to Section VI.1.–2. (for example, disputed facts concerning an affirmative defense), the party shall, in a separate section of the party's brief styled “Statement of Additional Disputed Facts,” set forth in simple declarative sentences, separately numbered and paragraphed, each additional material disputed fact which undercuts movant's claim that movant is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by specific reference to material in the record which establishes the fact or at least demonstrates that it is disputed.
4. If a reply brief is filed pursuant to D.C.COLO.LCivR 56.1, it shall contain:
  - (a) A separate section titled “Reply Concerning Undisputed Facts,” containing any factual reply which movant cares to make regarding the facts asserted in movant's motion to be undisputed. Any such factual reply shall be made in separate paragraphs numbered according to movant’s motion and the opposing party’s response and shall be supported by specific references to material in the record.
  - (b) A separate section styled “Response Concerning Disputed Facts” admitting or denying the disputed material facts set forth by the opposing party pursuant to Section VI.3. above. The admission or denial shall be made in paragraphs numbered to correspond to opposing party’s paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the

denial and a specific reference to material in the record supporting the denial.

5. The sole purpose of these procedures is to establish facts and to determine which of them are in dispute. Legal argument is not permitted here and should be reserved for separate portions of the briefs. For example, if it is believed that an established fact is immaterial, that belief should be expressed in the part of the brief that is devoted to legal argument, and the fact should be admitted. If, conversely, it is believed that the reference to material in the record does not support the claimed fact, that factual argument may appropriately be made.

## **VII. INSTRUCTIONS FOR SCHEDULING CONFERENCES**

The parties shall prepare and submit a proposed Scheduling Order five (5) days before the Scheduling Conference as set forth in the Court's "Instructions for Preparation of Scheduling Order." See D.C.COLO.LR, Appendix F. These Instructions are also available from the Clerk's Office or under the "Forms" button at <http://www.cod.uscourts.gov>.

## **VIII. INSTRUCTIONS FOR FINAL PRE-TRIAL CONFERENCES**

The parties shall prepare and submit a proposed Final Pretrial Order five (5) days before the final pretrial conference as set forth in the Court's "Instructions for Preparation of Final Pretrial Order." See D.C.COLO.LR, Appendix G. These Instructions are also available from the Clerk's Office or under the "Forms" button at <http://www.cod.uscourts.gov>.

## **IX. MOTIONS IN LIMINE & TRIAL BRIEFS**

1. Motions in limine are discouraged. This is particularly true when such motions are evidence driven and cannot be resolved until evidence is presented at trial. In the event that the parties believe a motion(s) in limine is appropriate and are unable to resolve the matters raised therein without Court involvement, such motion(s) may be filed not later than sixty (60) days prior to the Trial Preparation Conference. See D.C.COLO.LCivR 7.1 for applicable time limits for filing responsive and reply briefs.
2. No trial brief(s) will be allowed unless specifically ordered by the Court.

## **X. JURY INSTRUCTIONS**

1. The parties shall submit jury instructions (trial to jury) as set forth below no later than twenty (20) days before the Final Trial Preparation Conference.

- (a) **Stipulated Instructions:** To the maximum extent possible, the parties shall agree on one stipulated set of proposed jury instructions; only true conflict or uncertainty in binding substantive law (i.e. 10th Circuit, etc.) should prevent such agreement. The Court generally follows the form of preliminary instructions and instructions on substantive legal claims contained in the most current editions of the FEDERAL JURY PRACTICE AND INSTRUCTIONS (federal claims and introductory instructions) and the COLORADO JURY INSTRUCTIONS (state claims). At the time of this revision, the most current editions are KEVIN F. O'MALLEY, JAY E. GRENIG, & WILLIAM C. LEE, FEDERAL JURY PRACTICE AND INSTRUCTIONS (5th ed. 2000), or the COLORADO SUPREME COURT COMMITTEE ON CIVIL JURY INSTRUCTIONS, COLORADO JURY INSTRUCTIONS (4th ed. 2000).
- (b) **Disputed Instructions:** To the extent that counsel are unable to agree on instructions, each side may tender a set of disputed instructions. Plaintiff's disputed instructions should be clearly labeled as "Plaintiff's" (numbered 1, 2, 3, etc.) and Defendant's disputed instructions should be clearly labeled as "Defendant's" (lettered A, B, C. etc.).
- (c) **Authority for Stipulated and Disputed Instructions:** For each stipulated and disputed instruction, the party submitting the disputed instruction shall indicate the source and authority for the instruction. If the source is a pattern instruction from a source not listed in Section X.1.a., the party submitting the disputed instruction shall submit a copy of the pattern instruction and identify the authority underlying the pattern instruction.
- (d) **Special Procedure for the Party Opposing a Disputed Instruction:** The party opposing a disputed instruction shall provide the Court a memorandum that contains: (1) an explanation for their objection to the disputed instruction; (2) the authority relied on in support of their objection; (3) whether they have submitted an alternate instruction to the disputed instruction; (4) an explanation for why the alternate instruction should be given; and (5) the number or letter of the alternate instruction and the authority relied on in support thereof.
- (e) **Form of Submission:** Ultimately, six sets of instructions and the above-mentioned memorandum should be submitted to the Court. These sets are: (1) Stipulated Set with Authority; (2) Stipulated Set

without Authority; (3) Plaintiff's Disputed Set with Authority; (4) Plaintiff's Disputed Set without Authority; (5) Defendant's Disputed Set with Authority; and (6) Defendant's Disputed Set without Authority. The parties should submit three (3) hard copies of each of these sets as well as an electronic copy on computer disk in WordPerfect 9 format (the disk(s) submitted should contain only six files (one file for each set) and the memorandum listed above; under no circumstance should each instruction be contained in a separate file).

- (f) Final Jury Instructions and Verdict Form: Before or during trial, the Court will provide a set of proposed jury instructions and verdict form to the parties. Sometime near the close of evidence, a charge conference will be held during which the parties may object to instructions included in the Court's proposed set. Also at the charge conference, the parties may tender additional instructions from their previously submitted sets that were not included in the Court's proposed set. Counsel must have copies of these instructions and pertinent legal authority to submit at the charge conference. A final set of instructions will be distributed following the charge conference. Jury instructions are given before closing arguments. When deliberations commence, each juror may receive a written copy of the jury instructions and verdict form.

## **XI. INSTRUCTIONS FOR TRIAL PREPARATION CONFERENCES**

1. A Trial Preparation Conference will occur prior to trial. Counsel who will try the case must attend. Failure of chief trial counsel to attend the conference may result in sanctions, including vacating the trial date, striking claims or defenses, and imposition of attorneys' fees, among other things. This is counsel's opportunity to invite the Court's attention to any problems which need to be resolved before trial commences or which may arise during the course of the trial.
2. At the Trial Preparation Conference, counsel for the parties shall submit the following information:
  - (a) Two separate witness lists:
    - i. A final list that complies with the requirements of FED. R. CIV. P. 26(a)(3).
    - ii. A final list (using the form below) containing the name of each witness to be called, the proposed date(s) of the witnesses' testimony, and the anticipated length of the witnesses' testimony. Witnesses not listed in the Final



Pretrial Order may not be listed at the Trial Preparation Conference absent a stipulation approved by the Court or a showing of good cause.

<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO</p> <p>Judge Wiley Y. Daniel</p>	
Case No. _____	Date: _____
Case Title: _____	
<p>_____ (Plaintiff/Defendant)</p> <p style="margin-left: 150px;">WITNESS LIST</p>	
<u>WITNESS</u>	<u>PROPOSED DATE(S) AND LENGTH OF TESTIMONY</u>
_____	_____
_____	_____
_____	_____
_____	_____

Copies of this form are available under the "Judge's Information" button at [www.cod.uscourts.gov](http://www.cod.uscourts.gov) or from my Courtroom Deputy, Robert R. Keech, at (303) 335-2103.

(b) Two separate exhibit lists:

- i. A final list that complies with the requirements of FED. R. CIV. P. 26(a)(3).
- ii. A final list of proposed exhibits (using the form below). Plaintiff's Exhibits shall be numbered (1, 2, 3, etc.) and Defendant's Exhibits shall be lettered (A, B, C, etc.). If there are more than 26 exhibits for the Defendant, mark them as A1 through A99, B1 through B99, etc., or group the exhibits together using A1 through A4, B1 through B14, etc., as the evidence warrants. Do not use double or triple letters under any circumstances. There shall be no duplicate exhibits (i.e. exhibits listed on both Plaintiff's and Defendant's exhibit lists). Counsel shall stipulate to the admissibility of exhibits to the maximum extent possible and indicate all stipulated exhibits on the list submitted at the Trial Preparation Conference.

EXHIBIT LIST									
CASE NO. _____ PLAINTIFF'S LIST _____ DEFENDANT'S LIST _____ THIRD PTY DEFTS. LIST _____									
CASE CAPTION _____ vs. _____ PAGE NO. _____ DATE _____									
LIST PLAINTIFF'S EXHIBITS BY NUMBERS (1, 2, 3, etc.) and DEFENDANT'S BY LETTER (A, B, C, etc.)									
EXHIBIT NO./LTR	WITNESS	DESCRIPTION	ADM/ AUTH	STIP	OFFER	RECD	REF.	RUL. RSVD.	COMMENTS/ INFO.

Copies of this form are available under the "Judge's Information" button at [www.cod.uscourts.gov](http://www.cod.uscourts.gov) or from my Courtroom Deputy, Robert R. Keech, at (303) 335-2103.

- (c) An original and two copies of a proposed verdict form (trial to jury) for civil cases or an original and one copy of a proposed verdict form (trial to jury) for criminal cases. The parties should submit a hard copy of the verdict form as well as an electronic copy on computer disk in WordPerfect 9 format.
- (d) An original and two copies of proposed *voir dire* questions (trial to jury) for civil cases or an original and one copy of proposed *voir dire* questions (trial to jury) for criminal cases.
- (e) Proposed Findings of Fact and Conclusions of Law along with a proposed order for judgment or other remedy (trial to Court).
  - (i) Findings of Fact: To the maximum extent possible, the parties shall agree on the facts. Proposed findings of fact should be stated as nearly as possible in the same order as their anticipated order of proof at trial. To the extent that the parties cannot agree on one version of facts, each party shall submit their own proposals and underline all disputed facts.
  - (ii) Conclusions of Law: Conclusions of law need not be underlined even where disputed. Counsel shall key their closing arguments to their proposed findings and conclusions so as to point out the evidence they rely on to support their proposals.
  - (iii) Form of Submission: Each party shall submit two copies of their proposed findings of fact and conclusions of law; one

clean copy and one copy with underlining as discussed above in Section XI.2.e.i.

- (f) Any stipulated or proposed amendments to the Pretrial Order.
- (g) A list of issues and/or motions that require resolution prior to, or at, trial.

## **XII. TRIAL INFORMATION**

Unless instructed otherwise, trials are normally set to begin at 9:00 a.m. On the first day of trial, counsel are normally expected to be present at 8:30 a.m. to go over any final matters before the commencement of trial. The normal trial day begins at 9:00 a.m. and continues until 5:00 p.m. The Court will recess for a lunch break as well as short mid-morning and mid-afternoon breaks.

## **XIII. TRIAL INSTRUCTIONS**

1. Technology. If you intend to use any special equipment such as video tapes, movies, slides, overhead projectors, televisions, tape recorders, or computer assisted disks, it is your responsibility to procure and deliver the equipment to the Courtroom. Please make special arrangements with my courtroom deputy clerk, Robert R. Keech, (303) 335-2103, at least ten (10) days before the start of trial.
2. Transcripts. If you desire Real Time or daily copy transcripts, you must make arrangements with my court reporter, Kara Spitler, (303) 335-2108, at least thirty (30) days before the start of trial.
3. Glossary. The morning of trial provide the Court, the court reporter, the courtroom deputy clerk, and opposing counsel with a glossary of any unusual or technical terminology.
4. Depositions. All original deposition transcripts should be delivered to the courtroom deputy clerk before the start of trial.
  - (a) Videotaped Depositions. If videotaped deposition testimony is to be used, the Court and all parties must be given at least ten (10) days advance notice. The party offering the testimony must arrange for any necessary technology pursuant to Section XIII.1. above.
  - (b) Deposition Testimony. Counsel are reminded that, pursuant to FED. R. CIV. P. 5(d), depositions, interrogatories and requests for

admissions are not filed with the Clerk unless on special order of the Court. The original deposition transcripts should be in possession of the party to whom they are delivered. They must be brought to trial. The following guidelines should be used for preparing depositions for use as testimony at trial:

- i. Jury Trials. Advise opposing counsel of your proposed offer by page and line reference within twenty (20) days prior to trial to enable the preparation of objections and the offer of additional portions of the transcript. The party offering the deposition testimony is required to provide a person to read the answers.
  - ii. Court Trials. The Court will determine how depositions will be used at the time of the Trial Preparation Conference. The offering party shall provide the Court with two copies of the transcript prior to trial, each with the plaintiff's designations highlighted in yellow and the defendant's designations highlighted in blue. (The highlighting should be accomplished in advance of trial, so that the highlighted deposition transcripts can be marked as an exhibit and tendered to the courtroom deputy at the beginning of the trial.)
- (c) Objections to Use of a Deposition. Objections to use of a designated deposition or video tape deposition shall be filed with the clerk and served (by same day delivery) no later than ten (10) days prior to trial. The parties shall attempt to resolve these objections prior to trial. Objections that are not resolved by the parties prior to trial must be marked on a copy of the written transcript and provided to the Court. These objections will be resolved at trial (not prior to trial).
5. Exhibits. Provide three copies of your updated and exhibit lists (as required in Section XI.2.b.) to my courtroom deputy clerk on the morning of trial. All exhibits must be marked with exhibit labels which identify the case number and exhibit number or letter. These labels can be obtained from the clerk's office.
- (a) Original Exhibits (to be used by the witnesses). All original exhibits shall be submitted to my courtroom deputy clerk in three-ring binders at the start of the trial. Include all exhibits in these notebooks. (Even those to which there is no stipulation from opposing counsel.)

- i. A label shall be placed on the spine of each binder that shows the volume number and which exhibits are contained within each binder.
    - ii. Each original exhibit shall bear an extended tab showing the number or letter of the exhibit.
    - iii. Each document shall be paginated including any attachments thereto.
  - (b) Copies of Exhibits. In addition to the original exhibit, copies of all exhibits shall be provided to opposing counsel, the Court (two copies), and the court reporter. The copies shall be submitted in the same format as the original exhibits.
  - (c) Exhibits for Jurors. Because exhibit notebooks for jurors tend to be bulky and unmanageable, the Court discourages their use. However, exhibit notebooks may be used at the discretion of counsel and with the consent of the Court, provided that all parties use exhibit notebooks and the volume of exhibits is manageable. Juror notebooks shall be provided for each juror. The juror notebooks shall be submitted to the courtroom deputy clerk at the start of trial. These notebooks should contain only stipulated exhibits that are ready to be admitted. These exhibits shall have extended tabs and be paginated to match the originals. Do not include a copy of the exhibit list in the juror notebooks. Those exhibits that are not stipulated to should be placed in manila files, grouping all jurors' copies to the same exhibit number in one file. Copies should be three-hole punched and bear extended tabs. (As exhibits are admitted during the trial, the courtroom deputy clerk will either hand the exhibits to the jurors or place them in the juror notebooks during recesses).
  - (d) Use of Exhibits During Trial. The courtroom deputy clerk will present the exhibits to the witnesses. Instead of the traditional "I hand you what has been marked for identification as plaintiffs exhibit number \_\_," counsel may simply say, "Please look at exhibit number one..." and the exhibit will be placed before the witness. Counsel need not approach the witness as part of this process.
6. Witnesses. Provide three copies of your updated and current witness lists (as required in Section XI.2.a.) to my courtroom deputy clerk on the morning of trial.
- (a) All witnesses are required to remain in the witness room until called

to testify unless otherwise ordered by the Court.

- (b) Questioning of Witnesses During Trial. Counsel shall make certain that verbal responses are elicited from all witnesses during questioning.

- 7. Settlement. The Local Rules require that in order to avoid assessment of jury costs, the parties must notify the Court of a settlement before 12:00 noon on the last business day before the scheduled trial date. See D.C.COLO.LCivR 54.2.
- 8. Jury Instructions and Verdict Form. See Section X, *supra*.